WP(C) 5315/2006
BEFORE
HON'BLE JUSTICE B.K. SHARMA

JUDGEMENT AND ORDER(ORAL)

1. Heard Mr. M. Talukdar, learned counsel for the petitioner as well as Mr. S. Saikia, learned S.C., PWD. Also heard Mr. R. Debey, learned S.C., Finance Department who was requested to obtain instruction in the matter.

2. The petitioner who has been serving under the respondents as Sub-Engineer Grade-II has not been paid his salary since June, 2006. There is no dispute that the petitioner has been discharging his duties as Sub-Engineer Grade-II till date.

3. The petitioner was first appointed as Workcharged Section Assistant by Annexure- A order dated 09.01.84. Thereafter he was brought to regular establishment by order dated 30.07.98 (Annexure-B), which reads as follows:

GOVERNMENT OF ASSAM
OFFICE OF THE EXECUTIVE ENGINEER PWD (ROADS)
GUWAHATI CITY DIVISION NO. 1.
GUWAHATI

OFFICE ORDER NO. 81 DATE 30.07.98

Service of Shri Dhaneswar Das, senior most W/C Sect. Asstt. Of this division is hereby brought to the regular Section Assistant cadre with effect from 01.08.98 against the vacant post caused due to retirement of regular sub-Engineer, Gr-II Shri Fakaruddin Ahmed until further order.

Executive Engineer, PWD (Roads)
Guwahati City Division No. 1
Guwahati-21

4. On perusal of the order quoted above, it leaves to no manner of doubt that the petitioner was made regular Section Assistant w.e.f. 01.08.98 against the vacant post of Sub-Engineer Grade-II which occurred due to retirement of one Shri Fakaruddin Ahmed. Thus, the service of the petitioner was utilized all along as regular Section Assistant against the vacant post of Sub-Engineer Grade-II in the regular establishment.

5. As per the practice prevalent, the Section Assistants working under the respondents are required to undergo certain training and on successful completion of the same, they are re-designated as Sub-Engineer Grade-II with higher pay scale and higher responsibility. According to the respondents this is not a promotion. By that as it may, the petitioner successfully completed the particular training which will be evident from the Office order dated 20.12.04 (Annexure-C to the affidavit in opposition). In the order it was indicated that the incumbents named therein including the petitioner would be entitled to higher scale pay of Rs. 3010/- to 6075/- plus other admissible allowances w.e.f. date of taking of the charge of higher responsibility with the designation of Sub-Engineer Grade-II.

6. After the aforesaid order dated 20.12.04, the petitioner has been shown

promoted to the post of Sub-Engineer Grade-II by office order dated 03.01.05. According to the respondents, the term promoted is a misnomer inasmuch as the Section Assistants upon clearing the particular training are only redesignated as Sub-Engineer Grade-II with the entrustment of higher responsibility and payment of salary in the higher scale of pay as indicated above.

7. After the aforesaid order dated 03.01.05, the petitioner has been serving as Sub-Engineer Grade-II till this very date. He also received salary as such till May, 2006. However, trouble started when his salary was not released from June, 2006.

8. In the affidavit in opposition filed by the respondents, it has been contended that the post of Sub-Engineer is made for the incumbent only and such post comes to an end on the retirement/expiry etc. of the incumbent. In this connection, the respondents have annexed Annexures A and B communications dated 28.05.93 and April, 1995. By the said communications, sanction of the Govt. in the Public Works Department towards creation and promotion of 833 and 77 workcharged Sub-Engineers Grade-II were communicated. While by the first communication creation of 833 posts of Sub-Engineer Grade-II was conveyed, by the second order approval towards promotion of 77 workcharged Section Assistant as Sub-Engineer Grade-II was communicated. It was also communicated that as and when 77 workcharged Sub-Engineer Grade-II would retire/resign, die while in service or join some other posts by relinquishing their posts as Sub-Engineer, there would be no further entertainment of workcharged Sub-Engineer Grade-II in their places. Thus, what the respondents tired to convey is that irrespective of the appointment of the petitioner As Sub-Engineer Grade-II by Annexure-C order dated 03.01.05 and also irrespective of the fact that the petitioner has been discharging his duties as such, in absence of approval of the Finance Department towards continuation of the post of Sub-Engineer Grade-II, the petitioner is not entitled to receive his monthly salary.

9. The aforesaid position created by the respondents themselves has virtually lead to starvation of the petitioner in absence of salary being paid to him since June, 2006. Till this very date the petitioner has been discharging his duties and function as Sub-Engineer Grade-II on the strength of Annexure-C order dated 03.01.05. This order dated 03.01.05 was in tune with Annexure-C order dated 20.12.04 annexed to the counter affidavit in which it was clearly indicated that upon successful completion of the particular training, the incumbents named therein would be entitled to receive their salary in the higher scale of pay of Rs. 3010/- to 6075/- and that they would be redesignated Sub-Engineer Grade-II. In fact, the petitioner has been appointed as Sub-Engineer Grade-II by the aforesaid order dated 03.01.05 upon reference to Annexure-C order dated 20.12.04. If the petitioner has been assigned with duties of Sub-Engineer Grade-II in the pay scale of Rs. 3010/- to 6075/- and he has been discharging his duties as such, the kind of plea raised by the respondents cannot deprive him his monthly salary.

10. There is another aspect of the matter. From Annexure-B order dated 30.07.98 by which the petitioner was brought to regular establishment as Section Assistant it is seen that he was entertained against a vacant post of Sub-Engineer Grade-II upon retirement of the incumbent Shri Fakaruddin Ahmed. It is true that as per Annexure-B communication of April, 1995 such post is not to be continued upon retirement etc. of the incumbent. But in case of the petitioner he was adjusted against the said post of Sub-Engineer Grade-II way back in 1998, vide Annexure B order dated 30.07.98. Thus, there is no dispute that the petitioner had been serving as regular Section Assistant against the permanent post of Sub-Engineer Grade-II and at no point of time any objection was raised. However, after his successful completion of the required training and appointment as Sub-Engineer Grade-II and continuation as such and also receiving salary in the admissible higher pay scale upto May, 2006, the respondents with the aforesaid plea, have stopped the salary of the petitioner. In the affidavit, it has been stated that p

ost facto approval of the Finance Department have been sought for.

11. If any required formalities have not been observed by the respondents, but the petitioner has been assigned with higher responsibility by appointing him as Sub-Engineer Grade-II in the higher pay scale, the petitioner cannot be deprived of his salary. If this position is allowed to stand, it will lead to the situation in which the respondents can be said to be guilty of exploitation. They cannot make the petitioner to work shouldering higher responsibility and then to deny him salary raising technical pleas. The situation has been created by the respondents themselves and it is for them to solve the problem created by them. Moreover, in view of the fact that the petitioner was entertained as regular Section Assistant against the retirement vacancy of Sub-Engineer Grade-II, which continued against such post till he was formally designated as Sub-Engineer Grade-II, it cannot be said that salary of the petitioner cannot be paid due to non retention of the post. If any formalities are required to be observed, the respondents shall do the needful to observe those formalities without any delay. If any necessary follow up action is also required by the Finance Department, the said department shall carry out the same so that the petitioner can receive his salary from June, 2006.

12. In view of the above, the writ petition is allowed with a direction to the respondents as well as the Finance Department to pay the salary of the petitioner as Sub-Engineer Grade-II which has been withheld since June, 2006. Entire exercise shall be carried out on or before 30.04.07. The writ petition is allowed. There shall be no order as to costs.